

1 WILDE & ASSOCIATES  
2 Gregory L. Wilde, Esq.  
3 Nevada Bar No. 004417  
4 212 South Jones Boulevard  
5 Las Vegas, Nevada 89107  
6 Telephone: 702 258-8200  
7 [bk@wildelaw.com](mailto:bk@wildelaw.com)  
8 Fax: 702 258-8787

Electronically Filed on \_\_\_\_\_

6 MARK S. BOSCO. ESQ.  
7 Arizona Bar No. 010167  
8 TIFFANY & BOSCO, P.A.  
9 2525 East Camelback Road, Suite 300  
10 Phoenix, Arizona 85016  
11 Telephone: (602) 255-6000  
12 Deutsche Bank National Trust Company, as Trustee for Morgan Stanley, MSAC 2007-HE5  
13 09-71757

11 **UNITED STATES BANKRUPTCY COURT**  
12 **DISTRICT OF NEVADA**

14 In Re:

15 Mindy Spears

20 Debtor.

Bk Case No.: 10-14450-bam

EX PARTE APPLICATION FOR AN ORDER  
PURSUANT TO 362 (4) (A) (i)

17 Date:

18 Time:

19 Chapter 7

21 Deutsche Bank National Trust Company, as Trustee for Morgan Stanley, MSAC 2007-HE5,  
22 Secured Creditor herein, ("Secured Creditor" or "Movant" hereinafter), requests from this Court an  
23 Order Confirming that the Automatic Stay of 11 U.S.C § 362 has not arisen with respect to the Debtor  
24 due to the multiple filings as evidenced below. That on or about March 18, 2010, the above named  
25 Debtor filed this instant Chapter 7 Petition in Bankruptcy with the Court.  
26

**MEMORANDUM OF POINTS AND AUTHORITIES**

1  
2  
3 1. Secured Creditor is the current payee of a promissory note dated December 4, 2006 in  
4 the principal sum of \$293,000.00 ("Promissory Note" herein), secured by a Real Property Trust Deed  
5 of same date ("Trust Deed" herein) upon property generally described as 3008 Periscope Court, Las  
6 Vegas, NV 89117, and legally described as follows:

7 PARCEL ONE:

8 LOT 80 IN BLOCK 3 OF THE BLUFFS UNIT 11C AS SHOWN BY MAP THEREOF ON  
9 FILE IN BOOK 41 OF PLATS, PAGE 68, IN THE OFFICE OF THE COUNTY RECORDER  
10 OF CLARK COUNTY, NEVADA AND AS AMENDED BY CERTIFICATE OF  
AMENDMENT RECORDED APRIL 24, 1989 IN BOOK 890424 AS DOCUMENT NO.  
00556. IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA.

11 PARCEL TWO:

12 A NON-EXCLUSIVE EASEMENT ON AND OVER THE "COMMON AREA" AS DEFINED  
13 IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS TO  
14 WHICH REFERENCE IS HEREAFTER MADE FOR ACCESS, USE, OCCUPANCY,  
15 ENJOYMENT, INGRESS AND EGRESS OF THE AMENITIES LOCATED THEREON  
16 SUBJECT TO THE TERMS AND PROVISIONS OF SAID  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED  
JANUARY 20, 1987 IN BOOK 870120 AS DOCUMENT NO. 00088. THE COMMON AREA  
IS FOR THE USE OF OWNERS OF LOTS WHICH ARE SUBJECT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND IS NOT  
FOR THE USE OF THE GENERAL PUBLIC.

17  
18 ("subject property" herein).

19 2. True and correct copies of the Note and Deed of Trust are attached hereto as Exhibit's  
20 "A" and "B" and incorporated herein by reference for all purposes.

21 3. The debtor filed the instant case on March 18, 2010.

22 4. Prior to filing of the present case, the Debtor filed an additional case within a one-year  
23 period as follows: Chapter: 13. Case Number: 09-21449, Filed: June 30, 2009. District of Nevada. Date  
24 dismissed on February 5, 2010.

25 5. Prior to filing of the present case, the Debtor filed an additional case within a one-year  
26 period as follows: Chapter: 13. Case Number: 08-21558, filed October 2, 2008, District of Nevada.  
dismissed on April 24, 2009.

1           6.       Secured Creditor requests that the Court enter an Order confirming that there is no  
2 Automatic Stay affecting Secured Creditor with respect to the Debtor.

3           7.       Further. Bankruptcy Code Section 362(j) allows as follows:

4  
5                       On request of a party in interest, the court shall issue an order under subsection  
6                       (c) confirming that the automatic stay has been terminated.

7           8.       Additionally, Bankruptcy Code Section 362 (4)(A)(i) and (ii) states as follows:  
8 if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or  
9 more single or joint cases of the debtor were pending within the previous year but were dismissed, other  
10 than a case refiled under section 707 (b), the stay under subsection (a) **shall not go into effect upon the**  
11 **filing of the later case; and**

12                   (ii)     **on request of a party in interest, the court shall promptly enter an order**  
13                   **confirming that no stay is in effect; (*emphasis added.*)**

14           (B) if, within 30 days after the filing of the later case, a party in interest requests the court may  
15 order the stay to take effect in the case as to any or all creditors (subject to such conditions or  
16 limitations as the court may impose), after notice and a hearing, only if the party in interest  
17 demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

18           9.       As stated above. Debtor was a Debtor in more than 2 prior cases pending within a  
19 preceding one year period of time prior to the institution of the present case, and that those prior cases  
20 were dismissed. In fact, the Debtor was a Debtor in multiple prior cases pending within a preceding one  
21 year period of time prior to the institution of the present case, and all of those prior cases were  
22 dismissed.

23           10.      The Debtor did not seek an order to extend the automatic stay.

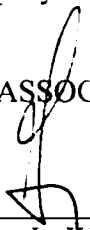
24           11.      Secured Creditor respectfully requests an order from the Court confirming that the  
25 Automatic Stay never arose as to Secured Creditor, and that Secured Creditor may proceed with  
26

1 collection on the note, including but not limited to foreclosure and an action to recover possession of  
2 the subject property described herein.

3 WHEREFORE, for all of the foregoing reasons, Secured Creditor, Wells Fargo Bank, NA  
4 requests the Court to enter an Order confirming that the Automatic Stay never arose and is otherwise  
5 terminated, with respect to the Debtor and the subject property described in this motion.  
6

7  
8 Respectfully submitted, this 24 day of MAR, 2010.

9  
10 WILDE & ASSOCIATES

11 By:   
12 Gregory L. Wilde, Esq.  
13 Attorney for Secured Creditor  
14 212 S. Jones Boulevard  
Las Vegas, NV 89107

15 Copies of the foregoing mailed this 24 day of March 2010

16  
17 Boris A. Avramski  
18 bkhelpevegas@yahoo.com  
Attorney for Debtor

19 Lenard E Schwartzer  
20 trustee@s-mlaw.com  
21 Trustee  
22  
23  
24  
25  
26